

CITY OF NEWBERG CITY COUNCIL MINUTES
JUNE 20, 2011
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)

A work session was held prior to the meeting. A presentation on the Visitor Center business plan was given. No action was taken and no decisions were made.

I. CALL MEETING TO ORDER

Mayor Bob Andrews called the meeting to order at 7:00 PM.

II. ROLL CALL

Members

Present:	Mayor Bob Andrews	Denise Bacon	Ryan Howard	Stephen McKinney
	Bart Rierson	Marc Shelton	Wade Witherspoon	

Staff

Present:	Daniel Danicic, City Manager	Terrence Mahr, City Attorney
	Barton Brierley, Planning and Building Director	Eric Ronning, Police Detective
	Janelle Nordyke, Finance Director	Norma I. Alley, City Recorder
	David Beam, Economic Development Coordinator	Jennifer Nelson, Minutes Recorder

Others

Present: Sgt. John Goad and Sid Friedman

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. CITY MANAGER'S REPORT

Mr. Daniel Danicic, City Manager, reported on the success of Public Works Day at the Library with six hundred plus visitors. He gave an update on the problems with the microphones; they are still working on the issues and are awaiting a delivery date for new ones. The Library will kick off its summer reading program this Wednesday at 1:00 PM and the fire department will hold a burn-to-learn event on Thursday at 6:30 PM on Terrance Drive. The City's annual water report was also distributed last week.

Mayor Andrews followed the city manager's report with the reading of a proclamation and presentation to Sgt. John Goad in recognition of his retirement and over 25 years of service to the City of Newberg.

V. COUNCIL APPOINTMENTS

Consider appointing Kathleen Jones and Cody Ridenour to the Newberg Library Board.
TIME – 7:09 PM

MOTION: Rierson/Bacon approving the Mayor's appointment of Kathleen Jones to position#1 and Cody Ridenour for position #5 to the Newberg Library Board. (7 Yes/0 No) Motion carried.

VI. PUBLIC COMMENTS

None.

VII. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2011-2954** approving an amendment to the Fire Collective Bargaining Agreement.

This item was pulled from the Consent Calendar and considered under New Business.

2. Consider a motion approving a sound permit for Newberg Friends Church for an event on July 10, 2011.
3. Consider a motion approving City Council Minutes for April 18, 2011, May 2, 2011, and May 16, 2011.

MOTION: McKinney/Rierson approving the Consent Calendar including a sound permit for Newberg Friends Church and the City Council Minutes for April 18, 2011, May 2, 2011, and May 16, 2011. (7 Yes/0 No) Motion carried.

VIII. PUBLIC HEARINGS

1. Consider a motion approving **Order No. 2011-0031** affirming the Planning Commission's decision to approve a partition and variance for a property located at 803 E. Ninth Street.

TIME – 7:12 PM

Mayor Andrews called for any abstentions, biases, conflicts of jurisdiction, or ex-parte contact from the Council; none appeared.

Councilor Denise Bacon stated she serves on the Habitat for Humanity Board and she is also on the committee that brought this forth.

Mayor Andrews stated an individual contacted him about where this was located after the Planning Commission hearing; there were no discussions and his decisions will be based on the record.

Mr. Terrence Mahr, City Attorney, asked Councilor Bacon about her position on the Habitat for Humanity Board and if it is a non-paying position. Councilor Bacon replied she does not get paid and after this was appealed she did leave the board meetings whenever this topic was to be discussed. Mr. Mahr stated a volunteer position does not rise to be a conflict requiring for her to abstain.

Mr. Mahr made the required legal statements in quasi-judicial matters and explained the procedure for testimony. He proceeded to explain this item was heard by the Planning Commission and appealed. There is a one hundred and twenty day time period for the Council to make a decision, making the deadline June 28, 2011, otherwise the applicant can go to court and order the City to approve the application if no decision is made by then.

Mr. Barton Brierley, Planning and Building Director, presented the staff report using a PowerPoint slideshow (see official meeting packet for full report).

Councilor Marc Shelton asked if there was someone living in the dwelling. Staff replied for about a year.

Mayor Andrews asked about the proposed plan and parking spaces. Staff said the configuration is not approved; they required ninety degree parking and to dedicate four feet to reconfigure the site plan to

accommodate that. Mayor Andrews asked if it is still paved at twelve feet at the top of the plan. Staff replied it is and the parking will be paved with enough room for ninety degree parking.

Councilor Wade Witherspoon asked about signage, one way access in the plan, and the ability of cars to pass in the alley. Staff replied there are no parking fire lane signs along the alley but there is no requirement to post speed limit signs; the Planning Commission discussed the merits and issues of the one way and there was a motion that failed, but two cars can pass in the majority of the alley it is just the one section that is difficult.

Mr. Danicic added the low traffic volume will only have conflicts on an occasional basis and they rely on the nature of one individual stopping to allow another to pass; he did not see this as an issue.

Councilor Stephen McKinney asked if there was any anticipation of the neighbors to the east and west creating parking spaces in their back yards. Staff said they could and there is availability to use the alley for garage access; but, there will not be parking allowed in the alley although it is not signed. Councilor McKinney asked if the dwelling will be reduced in size to accommodate the ninety degree parking. Staff replied the occupants are constructing a small dwelling. Councilor McKinney asked about the difficulty of expanding the twenty foot section of the alley farther or widening the twelve foot section to the east. Staff said there would be difficulty with expanding although there is a little room.

Councilor Ryan Howard spoke of concerns from individuals with service trucks passing through where they otherwise would not; he asked if mail and garbage deliveries will be made that are currently not there. Staff replied they spoke with the post office and the garbage company and they indicated they would not be using the alley, but other service vehicles may use it with moving in or out. Councilor Howard asked if there would be room for pedestrians for services rendered at the south street and if residents would be allowed to walk next to this. Staff replied there is a five foot setback on each side to allow for walking.

Councilor McKinney spoke about the neighbors on the east and west and further development along the alley and asked how many more properties may develop dwellings adjacent to the alley. Staff said there are a number with backyards to the alley and there is the possibility for additional homes to access it in a similar manner. The applicant talked to neighbors throughout the process and we have not heard anyone that would do that, but some may over time. Rules recently adopted by the City Council allow the use of an alley for access up to six dwellings so there is a potential for five additional ones.

Councilor Howard asked what the requirement was for the width of the alley. Staff replied the standard is twenty feet so this requires a variance.

Mayor Andrews asked if they have to have a right-of-way of twenty feet even though it is paved at twelve feet. Staff said it is not needed but to be twenty feet, right-of-way would need to be purchased.

Staff recommended denying the appeal.

Councilor McKinney asked if the dwellings at Meridian Street prevent a twenty foot alley there. Staff discussed the possibilities, saying it is impractical to require that but not impossible. Discussions followed the twelve foot versus the twenty foot sections in terms of paving and easements.

Councilor Bacon asked staff what his thoughts were on the matter. Mr. Brierley stated they need emergency access to the site and twenty feet is what the fire department requires, once they have that then it is not required all the way through.

Mayor Andrews closed the public hearing.

MOTION: Rierson/Shelton approving **Order No. 2011-0031** affirming the Planning Commission's decision to approve a partition and variance for a property located at 803 E. Ninth Street.

Councilor Wade Witherspoon said he was in favor of denying the appeal, but he would like to see this as a one way for potential for issues.

Councilor Bacon disagreed with having to pave the twelve foot section because people want to use the area and they are trying to concentrate traffic with the main access on the twenty foot side and pavement also causes drainage problems that we would be adding too.

Councilor Shelton asked if there would be a paving issue if you have continuous paving from the twenty to twelve foot section or does it actually improve drainage by getting it to go where we want it to go. Staff said anytime something is paved it keeps water from going into the ground and it has to be directed somewhere. This can be resolved with engineering design, although it is more impervious it also allows the ability to channel the runoff; gravel does not allow the water to be directed. Councilor Shelton continued by saying he agreed with the city manager that parking on both sides does mitigate speeding and some of the parking was occurring by the residents even though it is illegal; he did not see paving as much of an issue.

Councilor Howard spoke of conditions being put on the applicant serving to make the alley nicer and to alleviate the concerns of other residents, but when looking at granting the variance this should only be in ideal circumstances. He asked the city attorney if they are looking at this based on the record itself or on the Planning Commission's approval of the variance with deference to their findings. Mr. Mahr said to look at the entire record not to show error in the findings. Councilor Howard said it would be great to allow this but it is not ideal and wondered if the benefits the alley will receive from the improvements justify the variance; he said he is on the fence about the matter.

Mayor Andrews said he appreciates Councilor Witherspoon's concerns; however, time might tell one thing or it may reinforce concern. He spoke of the narrow travel issues and paving and if this should still be a one way. He suggested this could be brought to the Traffic Safety Commission (TSC) for future reference so action is not needed tonight but if a problem is demonstrated it could go to the TSC.

Councilor McKinney said he sides with the Planning Commission and spoke of opening a door to a variance request that does not meet low and high bars. The transition from twenty feet to twelve creates a big problem in his mind and he could be compelled to go to a one way with paving to control the runoff. The Planning Commission chair sees a problem with this departing from our new rules, not the old one and he said he is inclined to support the appellant in this case. He agrees with Council Howard it is worthy of granting an exception even to the new rules we set and even the Planning Commission saw problems on this at their level. He said it was still one more ill-advised patchwork situation that we have a lot of in the city.

Mayor Andrews asked if there are any other areas in the city where access to a residence is by an alley. Staff replied there were and referred to packet page seventy-five for photos.

Councilor Howard asked if this is denied does that action accept and allow the appeal. Staff said the motion on the table would adopt the order which would approve the partition and uphold the Planning Commission decision. If they wish to deny the partition and reverse the Planning Commission's decision, then a different motion and order would be required and that would be the end of the appeal unless it moved onto the State Land Use Board of Appeals (LUBA).

VOTE: Approving Order No. 2011-0031 affirming the Planning Commission's decision to approve a partition and variance for a property located at 803 E. Ninth Street. (5 Yes/2 No [Howard, McKinney]) Motion carried.

Mayor Andrews recessed at 8:03 PM for seven minutes.

2. Consider a motion approving **Ordinance No. 2011-2735** establishing provisions for second-hand dealers.

TIME – 8:10 PM

Mayor Andrews called for any conflicts of interest or abstentions; none appeared.

Mr. Mahr and Detective Eric Ronning presented the staff report (see official meeting packet for full report).

Mayor Andrews asked about the fiscal impact costs to the police department to monitor this. Staff said there were minimal costs for staff time and administrative costs.

Detective Ronning spoke of a computer database costing about \$649.00 per year for unlimited use and it is beneficial whether the ordinance is in place or not because of the ability to search other cities in the system. Prior to the database, the additional time for staff was significant, but now the only staff is the detectives and the records system, if anything, there has been a decrease in the amount of time with this system.

Mayor Andrews spoke of this being held off because of something in the County Sheriff's Office and asked if this activity has been reconciled in the efforts to coordinate. Staff said they spoke with the individuals helping to create the ordinance and the use of the system in Newberg. The County is waiting to see what happens on the city levels. Mayor Andrews also asked about the definition of a pawn shop. Mr. Mahr referred to the State laws for definitions stating it is not in this ordinance because the Oregon Revised Statutes (ORS) governs this and the intent of this ordinance is not to regulate pawn dealers but second-hand dealers that buy property for resale. Detective Ronning added the definition of a dealer and second-hand is covered on page two of the ordinance or page 214 of the Council packet.

Councilor Shelton said he was comfortable with the second-hand term being in the title and the definition, but it is not lining up by mentioning the word "pawn" in their document and spoke of pulling all references out of the ordinance.

Mayor Andrews referred to page 221 of the packet regarding holding periods, asking if this refers just to the records, merchandise or both. Staff said it is to the merchandise itself, the records are held for one year at least.

Councilor Howard spoke of other holding periods. Staff said they are running no less than fifteen days to have a balance between accommodating someone with property stolen while on vacation and the need for the business to make a sale. Councilor Howard asked if this was to mainly allow time for someone to file a report, not time for the police to review the reports. Staff said it is intended for those who may have had property stolen.

Councilor Bart Rierson asked if they are talking about specific second-hand stores like the one on Hwy 99W or other shops that buy and sell used or consigned items like the Habitat Restore or thrift shops. Staff said it is not specifically for one store and donated items do not qualify, he cited other stores that may qualify like Ken & Daughter Jewelers and Game Stop.

Councilor Howard asked if there were complaints or reasons that brought about the interest in this ordinance. Detective Ronning said he looked at this when he realized a pawn dealership was coming to town and Newberg did not have anything like this.

Mayor Andrews opened and closed the public testimony as no citizens appeared to testify. Staff restated the intent of the ordinance and read the title striking the word pawn shops and clarifying the references to ORS recommending adoption with the change in the ordinance title from 2010 to 2011.

Mayor Andrews closed the public hearing.

MOTION: Shelton/Rierson approving **Ordinance No. 2011-2735** establishing provisions for second-hand dealers by title only and with corrections. (7 Yes/0 No) Motion carried.

3. Consider a motion approving **Ordinance No. 2011-2741** amending the Newberg Municipal Code regarding the use of alcohol, smoking, sales, and distribution of materials in public places; and approve **Resolution No. 2011-2955** revising city policy regarding temporary vendor sales permitting and rules in public places.

TIME – 8:52 PM

Mayor Andrews called for any conflicts of interest or abstentions; none appeared.

Mr. David Beam, Economic Development Coordinator, presented the staff report including a PowerPoint slideshow (see official meeting packet for full report). Staff recommended no changes at this time.

Discussions followed about smoking prohibitions in addition to the State prohibitions on public and private establishments, repealing possession and concentrating on consumption of intoxicants, defining intoxicants, permits for temporary sales being subject to city manager approval, deleting the section on literature because of issues with freedom of speech, the effective dates of the ordinance being thirty days from passage versus the resolution going into effect immediately on June 21, 2011, rather than July 20, 2011, and the allowance of commercial vendors to sell in the public right of way of which Francis Square is not.

Councilor Howard asked what criteria the city manager would use to grant or deny permission to distribute alcoholic beverages. Staff said they would need to show proof of an Oregon Liquor Control Commission (OLCC) license.

Mayor Andrews asked for clarification of who has jurisdiction on parks. Staff replied there are two entities, the City and the Chehalem Park and Recreation District (CPRD); the gazebo and Francis Square are controlled by the City and Memorial Park is owned by the City but operated by CPRD. If CPRD owns the park, the City has no jurisdiction and Memorial Park would need city manager approval because the City owns it.

Mayor Andrews asked if alcohol or intoxicants are allowed in CPRD parks and if this includes ball fields, athletic fields, or the park at the Cultural Center. Staff replied if it is called a park then this applies, but the Cultural Center is not labeled as a park.

Mayor Andrews asked about any request for permission from the city manager for alcohol consumption and if they are mainly looking at the OLCC license is there anything to consider the presence of minors. Staff replied this would be covered by the OLCC license and areas are typically roped off and monitors are present.

Mayor Andrews referred to page 225 and asked if public places include sidewalks because many citizens have complained about smoking in front of business entrances downtown. He asked what is considered the entrance to a sidewalk. Staff said State rules specifically talk about enclosed public spaces and a sidewalk is not enclosed; they are not banning that here. Mayor Andrews continued by speaking of needed wordsmithing in the first sentence on page 226. He also spoke of distributing handbills and retaining that no person shall throw or deposit any even though a littering ordinance is in place.

Mayor Andrews opened and closed public testimony as no citizens appeared to testify. The public hearing was closed and staff summarized the recommendations.

Councilor Rierson disagreed with the Mayor on the matter of littering.

MOTION: Rierson/Howard approving **Ordinance No. 2011-2741** amending the Newberg Municipal Code regarding the use of alcohol, smoking, sales, and distribution of materials in public places.

MOTION: Andrews/Shelton amending **Ordinance No. 2011-2741** to retain the language “no person shall” and delete the remainder which does not interfere with the First Amendment rights.

Mr. Beam also suggested cleaning up the title and adding the words “and non commercial”.

Councilor Shelton said he would consider adding the second amendment but also changing the title away from “distributing” and just use the language “throwing or depositing handbills in public spaces”.

MOTION: Andrews/Shelton amending **Ordinance No. 2011-2741**. (3 Yes [Andrews, Shelton, Witherspoon]/4 No [Bacon, Howard, McKinney, Rierson) Motion failed.

Councilor Shelton said he cannot support this ordinance because it is saying for the first time it is okay to drink in open public places when children can be present. What was approved at the library is enclosed and after hours, not out in public. He said CPRD has been good neighbors using the library for functions but he does not think it is appropriate to use that park for alcoholic consumption.

Councilor Rierson stated he may have been swayed by Councilor Shelton’s comments, but he does like the language repealing the handbills. He wished this could be taken in pieces.

Councilor Howard said he did not have the same problem with exposing minors to adults consuming alcohol and argued it may even be healthy to see adults consuming in a responsible manner.

Councilor McKinney said there has been a long tradition of prohibiting alcohol consumption in Newberg and he would have to answer to a lot of people if he voted for this. He gave his compliments to staff for the work done on this but said he still cannot support it.

Councilor Shelton said he could agree to support the second and third ordains with the amendment.

Councilors Rierson and Howard withdrew their motion to approve the ordinance.

MOTION: Shelton/Rierson adopting **Ordinance No. 2011-2741** read by title only with suggested amendments to remove ordination number one; changing the title regarding drinking and consumption and sale of liquor to an ordinance amending the Newberg Municipal Code regarding vendor sales and the distribution of handbills in public places as well as defining the term intoxicant; the second ordains changes from “supporting the economy by the wine industry” to “the city desires to maintain a clean environment and protect the rights of free speech”; and recitals #2 and #3 become #1 and #2 respectively with the omission of recital #1; and addressing the effective date to thirty days from adoption so the resolution does not depend on the ordinance. (7 Yes/0 No) Motion carried.

Mayor Andrews opened the public hearing on **Resolution No. 2011-2955** revising city policy regarding temporary vendor sales permitting and rules in public places. He called for any conflicts of interest or abstentions; none appeared. He opened and closed the public testimony as no citizens appeared to testify.

Discussions followed regarding changes needed in the resolution based on the amendments made to the ordinance to delete the first resolve dealing with alcohol consumption and modifying the others referring to the sale and consumption of alcohol.

Councilor Witherspoon wondered if some things should be left in for the Library and Cultural Center. Mr. Danicic said there is already a set of rules for the Library.

Councilor Shelton spoke of revisions to the language on #3 for Francis Square and the Memorial Gazebo and asked what the purpose of removing intoxicants and illegal drugs is when efforts were made to define intoxicants in the code. Staff replied not all intoxicants are necessarily illegal because of prescription drugs. Councilor Shelton said this is already in the criminal code and does not need to be stated and suggested striking all of that line. Mr. Mahr said this may be the way to go; however, in striking there is a possibility of wine or alcoholic beverages in Francis Square, it may be important to mention intoxicants and alcoholic beverages.

Councilor Howard asked if that would include tobacco. He is in favor of striking the whole line as it is redundant and the possession or use of illegal drugs is already prohibited in parks.

Discussions followed about the best way to modify bullet #3 and which words to eliminate or retain. Staff said the intent is to prevent poor behavior and disturbances. They determined to delete #1; take out “typically” in #3; delete the fifth and sixth bullet; delete “without written permission”; change to recitals in #2 adding a period and delete change property to public; on page 231 strike “such as the tourism/wine industry”; strike change numbers without the written permission of the city manager; and change the title by striking alcoholic and liquor city policies regarding sales in Francis Square.

Mayor Andrews closed the public hearing.

MOTION: Witherspoon/Rierson approving **Resolution No. 2011-2955** revising city policy regarding temporary vendor sales permitting and rules in public places as amended. (7 Yes/0 No) Motion carried.

Mayor Andrews recessed at 10:17 PM for five minutes.

IX. CONTINUED BUSINESS

Consider a motion approving **Ordinance No. 2011-2740** amending the Urban Growth Boundary, revising the Economic Opportunities Analysis, amending the Comprehensive Plan Map and text, and amending the Transportation System Plan.

TIME – 10:22 PM

Mayor Andrews said this ordinance is open for deliberations only; the written record was closed after it was left open for five days from the previous meeting.

Mr. Barton Brierley, Planning and Building Director, presented the staff report (see official meeting packet for full report).

There was discussion about the additional written testimony received and new evidence in the staff response, so Mr. Sid Friedman of 1,000 Friends of Oregon and Friends of Yamhill County requested reopening the record to give them a chance to rebut the new evidence presented by staff.

Mr. Brierley gave a brief staff report of the proposal with a PowerPoint and recommended adoption.

Mayor Andrews opened the record to accept Mr. Friedman’s request for a rebuttal to the new evidence.

Mr. Friedman stated a thirteen page response from staff was given to them on Friday, June 17, 2011 from the testimony they gave when the record was open. Attached to that was over one hundred pages of new evidence.

With only one business day available to review this material there was no chance to know what was in there in order to respond. He suggested the record should be reopened to allow the material to be reviewed and for all parties to respond to the evidence in the record.

Mr. Mahr said in fairness and due process they should be allowed to respond to the new evidence.

Discussions followed about the need to table the item and the desire to avoid a remand, but limiting the response to only issues raised by the City so staff does not have to rebut any further material coming into the record.

MOTION: Shelton/Rierson tabling Ordinance No. 2011-2740 to the July 18, 2011, Council meeting.

Staff discussed internal deadlines for publication of the Council packet and receiving the rebuttal in time. Mr. Brierley said he was comfortable staff would be able to respond to the rebuttal without the addition of any new evidence. Councilor Rierson withdrew his second to the motion.

MOTION: Shelton/McKinney tabling Ordinance No. 2011-2740 to the July 18, 2011, to receive additional written response but with no new evidence being accepted from either side.

Staff said material needed to be submitted by staff by July 1, 2011, for inclusion in the agenda packet or by Tuesday, June 28, 2011, by 5:00 PM so staff can respond. Councilor McKinney withdrew his second to the motion to table the ordinance.

MOTION: Shelton/Witherspoon tabling Ordinance No. 2011-2740 to the July 18, 2011, to receive additional written response but with no new evidence being accepted from either side. (5 Yes/2 No [McKinney, Rierson]) Motion carried.

X. NEW BUSINESS

1. Consider a motion approving **Resolution No. 2011-2959** adjusting the franchise agreement pertaining to solid waste and recycling service rates for Waste Management, Inc.

TIME – 10:54 PM

Mayor Andrews called for any conflicts of interest or abstentions; none appeared.

Mr. Danicic presented the staff report (see official meeting packet for full report). Staff noted an amendment was necessary to change the number to Resolution No. 2011-2959.

MOTION: Shelton/Rierson approving Resolution No. 2011-2959 adjusting the franchise agreement pertaining to solid waste and recycling service rates for Waste Management, Inc. (7 Yes/0 No) Motion carried.

2. Consider a motion approving **Resolution No. 2011-2954** approving an amendment to the Fire Collective Bargaining Agreement.

TIME – 10:58 PM

Mr. Mahr presented the staff report with amendments included in the memo of understanding and corrections in the numbering (see official meeting packet for full report).

MOTION: McKinney/Witherspoon approving Resolution No. 2011-2954 approving an amendment to the Fire Collective Bargaining Agreement. (7 Yes/0 No) Motion carried.

XI. COUNCIL BUSINESS

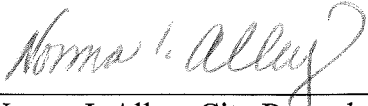
Councilor Shelton said he appreciated the details captured in the written minutes in response to public concerns for this as the official record; he said they were very comprehensive and well done.

Mr. Mahr announced there will be a thank you lunch held to honor Terry Hansen for his prosecution work tomorrow at 11:30 AM if anyone would like to attend.

XII. ADJOURNMENT


The meeting adjourned at 11:05 PM.

ADOPTED by the Newberg City Council this 1st day of August, 2011.



Norma I. Alley, City Recorder

ATTEST by the Mayor this 4th day of August, 2011.



Bob Andrews, Mayor